



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF I-CORP.

DATE: FEB. 27, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a management consulting and intellectual property business, seeks to permanently employ the Beneficiary in the United States as a director under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director, Texas Service Center, denied the petition. The Director determined that the Petitioner had not established its ability to pay the proffered wage as of the priority date.

The matter is now before us on appeal. The Petitioner submits additional evidence on appeal and asserts that it has established its ability to pay the proffered wage based upon the totality of the circumstances. Upon *de novo* review, we will sustain the appeal.

The Petitioner must establish its ability to pay the proffered wage to the Beneficiary as of the priority date. The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, USCIS requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

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Here, the priority date is May 13, 2014, and the proffered wage is \$83,845. Upon review of the entire record including the Petitioner's W-2 statements for the Beneficiary, the Petitioner's tax returns for 3 years, and additional evidence submitted on appeal, we conclude that the Petitioner has established that it is more likely than not that it had the ability to pay the proffered wage from the priority date onward. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has met that burden. Accordingly, the appeal is sustained and the petition is approved under section 203(b)(2), 8 U.S.C. § 1153(b)(2).

ORDER: The appeal is sustained.

Cite as *Matter of I-Corp.*, ID# 80152 (AAO Feb. 27, 2017)